JUNIPER

EXTRAORDINARY partnerships.

January 30, 2004

Ms. Jennifer J. Johnson
Secretary, Board of Governors of the Federal Reserve System
20th Street and Constitution Ave, N.W.
Washington, D.C. 20551

Re: Dockets R-1167, R-1168, R-1169, R-1170 and R-1171

Dear Ms. Johnson:

On behalf of Juniper Bank, I appreciate the opportunity to comment on the Federal Reserve Board's (the "Board") proposed rule to amend the "clear and conspicuous" standards in Regulations B, E, M, Z, and DD (the "Proposed Rule").

By way of background, Juniper Bank is a partnership focused, nationwide issuer of credit cards, with approximately $1.3 billion in managed credit card receivables and approximately 700,000 credit card accounts. Founded in 2001 it is one of the fastest growing credit card issuers in the United States. Juniper is an 89% owned subsidiary of the Canadian Imperial Bank of Commerce, a United States Financial Holding Company, with approximately $277 billion (Canadian) of on book assets and $710 billion (Canadian) of managed assets.

Juniper Bank shares the Board's goal of helping consumers receive noticeable and understandable information regarding consumer financial products and services. We believe that clear, conspicuous, noticeable and understandable disclosures not only helps consumers in selecting, understanding and using their Juniper credit cards, it helps Juniper as well. The more our customers know about our cards, the more likely they are to select, use and be satisfied with their Juniper cards. In addition, the clearer our disclosures, the easier time our customers will have understanding our products, and correspondingly, the less likely they will be to call or otherwise contact our customer service center complaining about or with questions concerning our disclosures; thereby reducing our costs. We also appreciate the Board's effort to make the various regulations more uniform and to facilitate compliance by lenders with the regulations.

That stated, we believe the Proposed Rule would not achieve its goals – that it does not address inadequacies in current disclosures, that, if enacted, it will result in further confusion for our customers, and will create undue compliance burdens on financial institutions, increase their printing and mailing costs and radically increase their exposure to litigation. We therefore respectfully request that the Proposed Rule be withdrawn.

The Proposal

The Board proposes that the Clear and Conspicuous requirements for Regulation P be expanded to cover Regulations B, E, M, Z, and DD. Some of the standards Regulation P lists in order to be "clear and conspicuous" include:

1. Use clear and concise sentences, paragraphs, and sections
2. Use short sentences and bulleted lists whenever possible
3. Use definite, concrete everyday words and active voice whenever possible
4. Avoid legal and highly technical business terminology whenever possible
5. Provide wide margins and ample spacing between lines
6. Design your notice to call attention to the nature and significance of the information in it.

Coupled with the Regulation P requirements, the Board proposes to include the Font Size recommendations for all of the disclosures in Regulation B, E, M, Z, and DD. Specifically the Board proposes that 12 point type would generally be considered large enough to meet the clear and conspicuous standard, that disclosures in less than 12 point type do not automatically violate the clear and conspicuous standard and that less than 8 point type would likely be too small to meet the standard. Juniper appreciates the fact that the phrases "do not automatically violate the standard" and "likely be too small to satisfy the standard" are designed to allow flexibility; our concern is that the reference to 12 point type will likely create a de facto requirement that lenders will have to comply with if they wish to avoid costly examiner and judicial scrutiny.

Summary of Argument

While clearly well intentioned, the Proposed Rule potentially would have the effect of 1) increasing consumer confusion; 2) increasing lender exposure to litigation; 3) imposing increased regulatory burdens on issuers; and 4) increasing lenders' costs. Moreover, no showing has been made that the current disclosure scheme is so inadequate as to warrant this type of restructuring of the disclosure scheme and creating the potential for increased costs and litigation liability described above.

The Proposed Rule Could Increase Consumer Confusion and be Less Helpful to Consumers

As mentioned above, Juniper appreciates the fact that the proposed font sizes are not mandated, and are designed to allow flexibility. However, Juniper believes that 12 point type will quickly become the standard that examiners and Courts will look to and that the industry, as a result, will have to adopt a 12 point type disclosure standard. Needless to say, if the proposed rule is adopted, the 12 point type size requirements of the proposal would lengthen existing required disclosures; in some cases by pages. It is axiomatic that the longer the disclosure, the less likely it is to be read. Consumers might actually be less likely to read the required disclosures that are 12 point type.

More important, the increased type size (along with the proposed wide margin and ample spacing requirements) would squeeze out a lot of disclosures that are not regulatorily required. For instance, the back of Juniper's credit card statements currently contain: instructions for submitting a payment (required by Section 226.10(b)), the Annual Renewal notice (required by section 226.9(e)(3)), an explanation of how the Finance Charge was calculated (required by section 226.7(e)), an address for notice of billing errors (required by 226.7(k)) and an explanation of the Free-ride Period (required by section 226.7(j)). The sum is a lot of information that needs to be squeezed into a small area. If we had to adopt the Reg. P standards which call for wide margins and ample spacing, coupled with 12 point font requirements, it would be impossible to fit all the required information on the back of our statements. Additional pages would have to be printed just to accommodate required disclosures. Any additional information that is not required to be included on each billing statement, but which Juniper believes is helpful and thus currently discloses on each billing statement, such as the Statement of Billing Rights, instructions for when a card is lost or stolen and what to do if the customer has Credit Bureau Disputes, would not make it on the billing statement. Disclosures that are required only annually such as the Statement of Billing Rights would be segregated and likely printed on separate documents and sent annually rather than monthly. Other disclosures which can be delivered by any means, such as instructions on what to do when the card is lost or stolen, would be sent much less often.

This might apply to other disclosure documents as well; increased font size would incent lenders not to disclose things that are not legally or statutorily required so as not to have to increase the amount of paper wasted and not to increase printing and other costs.

Similarly, the requirement that required disclosures be emphasized over non-required disclosures will not necessarily help consumers. Juniper currently prints the procedures to opt out of pre-approved solicitations in bold type in our credit card solicitations in an effort to make such disclosures clear and conspicuous. If the Regulation P standards are applied to Regulation Z as proposed, would Juniper have to emphasize Regulation Z disclosures over the FCRA disclosures? Would everything need to be emphasized? The "Schumer Box" on credit card solicitations would be rendered less conspicuous (most issuers currently print it in 11 or 12 point font) as all other required disclosures would be increased in size equal to Schumer Box disclosures. On credit card billing statements, the amount of credit line and the minimum amount due would have to be deemphasized vis a vis previous balance and new balance disclosures. In cardmember agreements, certain disclosures that are important to many customers such as the credit limit or the calculation of the minimum payment would have to be de-emphasized as compared to disclosures such as the method used to calculate finance charges. If the credit card issuer includes headings in the Cardmember Agreement, there would have to be headings for all Regulation Z required disclosures even relatively minor ones; and the headings would have to be more conspicuous than other headings. The application of these rules to cardmember agreements would produce a seemingly random patchwork of emphasized and de-emphasized disclosures, that would potentially be confusing and less useful to our customers.

The Proposal Could Create Substantial Litigation Risk and Exposure for Lenders

The proposal would expose Juniper and other lenders to increased litigation risk. There is no private right of action for violations of Reg. P. The same can not be said for Regulation Z and the other regulations subject to the Proposed Rule. In addition, the Reg P helpful guidance on how to draft clear and conspicuous disclosures would become the legal standard – even though they are inherently subject to a wide variety of interpretations (is a certain disclosure clear; could a particular sentence be shorter; are the words used everyday words or technical legal words, etc.). The result will be judges, juries, arbitrators and plaintiffs' attorneys applying their own interpretation to the necessarily subjective Regulation P standards. For instance, could the explanation of Finance Charges have been written with shorter sentences, or through bulleted lists. Cardmember Agreements, billing statements and solicitations will be scrutinized to determine if legal or business terminology could have been avoided. It is hard to see how any description of a two cycle billing formula could be written in a concise, easy to understand manner. In order to avoid liability creditors would have to engage design firms so that creditors could prove that the forms were designed in accordance with the regulations. Conceivably, a lender could violate the new standard even if all disclosures were understandable, clear and conspicuous if it could not demonstrate that the forms were designed to make them so.

The fact is, plaintiff attorneys will have the opportunity to review all disclosures and would likely pursue class actions (where they can "allege" that disclosures could have been clearer, sentences could have been shorter, bullet points could have been used, technical words could have been avoided, etc.) until more definite standards are created (whether by regulatory or judicial fiat). Model forms, which previously provided a safe harbor would be rendered obsolete, thereby eliminating the concept of safe harbor from litigation. At the very least, the Reg. P standards should not be added to regulations which expose lenders to liability for violations thereof unless and until the Board goes through every type of document that would be affected to determine how the new standards should be applied – in other words, until new set of model forms and safe harbors were developed for lenders to follow.

The Proposal Would Increase Regulatory Burdens on Lenders

Under the proposal, banks will have to review every communication with consumers and every disclosure (written and verbal) required under Regulations B(ECOA), E (EFTA), M (Consumer Leasing), Z (TILA), and DD (TISA) and determine whether bullet points should be added, margins widened, line spacing adjusted. The disclosure will have to also be examined for "understandability," whether they are too legal sounding and whether they lack "everyday words," – very subjective standards. Banks will then bear the cost of redrafting and reproducing many, if not all, of their disclosures. It is probable that some adjustments will have to be made to each required disclosure. This would be a mammoth undertaking.

The Proposal Would Dramatically Increase Lender Costs

In addition to the legal and design costs that lenders would have to incur in designing new disclosures, lenders would incur significant additional costs. For example, Juniper contacted the vendor that prints its cardmember agreements and asked what the incremental costs would be to print a Cardmember Agreement consistent with the Proposed Rule. We were told that the increased printing costs would be $.11 per cardmember agreement based on an average order of 1,000 pieces. Given the millions of cardmember agreements that the credit card industry prints each year, the increased printing costs alone would result in tens, if not hundreds, of millions of dollars which would be passed on to consumers – and this does not take into account any potential increase in postal fees. Similarly, the costs of printing credit card solicitations would increase. Juniper's vendor estimated the increased cost would be $5.48 for every thousand credit card solicitations printed. Credit card billing statements would be a similar story. Juniper has been told by its vendors that the billing statements, as presently designed, could not accommodate the requirements of the Proposed Rule – that they would have to be redesigned and additional paper would need to be printed at additional printing and possibly postal costs.

There Has Been No Showing As To Disclosure Inadequacy That Would Justify Such Increased Burdens and Liabilities

At Juniper we hesitate to say "if it ain't broke, don't fix it", because we believe it is always possible to improve things. Nevertheless, in this instance, we do not believe that a showing has been made to justify the enormous compliance burden and potential liability that the Proposed Rule could engender. There have been no demonstration that the current disclosure scheme is confusing or unclear. Even if the Board can identify specific disclosures that could be improved, we submit that the Board address them specifically and not adopt such a far reaching proposal with such reaching consequences.

Conclusion

Accordingly, Juniper respectfully requests that the proposal be withdrawn. Again, thank you for the opportunity to submit our comments. Should anyone desire, we at Juniper would be delighted to discuss our concerns further.

Sincerely,

Clinton W. Walker

CWW/cm